

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ROGER BRIGGS, JR. §
VS. § CIVIL ACTION NO. 1:06cv286
BOARD OF PARDONS AND PAROLES §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Roger Briggs, Jr., an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends this lawsuit be dismissed for failure to state a claim upon which relief may be granted and as frivolous.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

Plaintiff alleges his release on parole was improperly revoked. The magistrate judge, relying on the Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), concluded this lawsuit should be dismissed because a decision in plaintiff's favor would imply that his confinement was invalid.

In his objections, plaintiff states he is not challenging the decision made by the Board of Pardons and Paroles in his case. Instead, he describes his claim as a challenge to the procedures used by the Board in his case. As a result, he asserts that a finding in his favor would not necessarily demonstrate that he should be released from confinement.

However, plaintiff is not making a general challenge to the procedures used by the Board of Pardons and Paroles. Instead, he asserts that in his case the Board improperly considered certain evidence when it determined his release on parole should be revoked. As such evidence formed the basis for the revocation, a finding in plaintiff's favor would therefore necessarily imply that his confinement is invalid. As a result, the magistrate judge correctly concluded *Heck* requires that this lawsuit be dismissed.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge

are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this lawsuit.

SIGNED this the **14** day of **December, 2006**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge